

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2001 Iowa Acts, chapter 192, section 4(6), the Department of Human Services amends Chapter 82, “Intermediate Care Facilities for Persons With an Intellectual Disability,” Iowa Administrative Code.

These amendments provide clarification of the treatment of related-party compensation in the setting of rates for intermediate care facilities for persons with an intellectual disability (ICF/ID). The amendments also serve to clarify the Department’s treatment of legal, accounting, consulting and other professional fees, including association dues, and penalties and fines. These amendments change what is required to be submitted to the Department with the cost report and how the cost report is to be submitted, better define the timing for submitting an amended cost report, and clarify the Department’s policy on the penalty period for late submission of cost reports. The Department is also making changes to language to reflect current operations of the Iowa Medicaid Enterprise.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0788C** on June 12, 2013.

The Department received comments from two respondents on these amendments.

Comment one: The first comment was a query and a request for information, “Does this rule making apply to privately owned for-profit facilities? Could you briefly explain new paragraph 82.5(11)“m”?”

Department response: This rule making applies to any intermediate care facility for persons with an intellectual disability (ICF/ID) which receives reimbursement from Iowa Medicaid.

Item 4 rescinds current paragraph 82.5(11)“m” and adopts a new paragraph in its place. Current paragraph 82.5(11)“m” allows a broad definition of allowable legal fees which may be included in the provider’s rate. New paragraph “m” deals not only with legal fees, but with accounting, consulting, and other professional fees as well. The new paragraph sets out certain types of fees that are explicitly not allowed costs for Medicaid reimbursement, including lobbying fees and legal fees for administrative or judicial proceedings in which the facility does not prevail on the disputed issue.

Comment two: Currently all intermediate care facility (ICF) cost reports except as described in subrule 82.5(14) are filed for the fiscal year July 1 through June 30 and are due no later than September 30. The proposal would change the due date to “three months after the end of the facility’s established fiscal year.” Assuming that the new due date implies that those facilities would use their fiscal year for the report, then those facilities would have to make a transition from the June 30 report date to their fiscal year-end report date. Has adequate consideration been given to the methodology of changing the year end on reports, when this will take place, what inflation index will be used, what data will be used in the 80th percentile calculation, etc. Are the benefits of making this change sufficient to justify the problems and cost of making the change? Also, when this has been fully implemented, comparisons of ICF costs among facilities will not be possible as the time periods reported will not be the same.

Department response: 2011 Iowa Acts, House File 649, directed the Department to develop a uniform cost report that would be used by several different types of Medicaid providers. An issue was identified in the development of the report that some entities report based on a regulatory mandated year end and some do not have that requirement. As part of this rule making, the Department added language to make the transition to the uniform cost report easier.

However, because implementation of the uniform cost report will not be complete during the upcoming year, the Department did not adopt the proposed language in subrule 82.5(3) requiring the cost report submission by three months after the provider’s fiscal year end and restored the September 30 due date. As the uniform cost report becomes closer to being implemented, the Department will work with providers on a transition plan to include due dates, comparisons and limit calculations.

Comment three: An ICF cost report is filed for each ICF. If a provider operates more than one facility (which is very common), it files a separate cost report for each facility. Each cost report is done for that physical facility, not for the entire provider agency. Compilations, reviews, and audits are

typically done for the entire provider agency, not by individual facility. Therefore, in most cases there is no compilation, review, or audit that covers only the facility on the cost report. Also, in many cases the compilation, review, or audit is not completed within three months after the end of the fiscal year, so it will be impossible to submit it with the cost report.

Department response: When a financial statement is still being prepared at the time a cost report is required to be submitted, there would be an expectation that the facility disclose the type of financial statement being prepared and an expected date it would be available. The Iowa Medicaid Enterprise provider cost audit and rate setting contractor will take that information into consideration during the review process. The expectation is that, once completed, the financial statement would be submitted.

There are entities that have an exception to policy to be able to file one report for all individual homes. While the Department understands that the financial reports do combine operations for several entities, there is information within a financial statement that will help the Iowa Medicaid Enterprise provider cost audit and rate setting contractor understand transactions.

Comment four: The proposed amendments would deny a provider the right to even request a review of a financial and statistical report after the facility is notified of its per diem rate. This unfairly denies the provider all rights to remedy an error no matter what the source of the problem.

Department response: A facility can notify the Department if a significant financial change related to a cost report has been submitted by the facility certifying that the information is correct; a review has been completed, including correspondence between the Department and the provider; a payment rate has been calculated; and the appeal time frame has elapsed. The Department will consider factors including, but not limited to, the nature of the changes and the circumstances that led to the discovery of the issue to determine if a new review is warranted. Also, a provider will still have the ability to file an appeal of any final rate determinations made by the Department.

As a result of the comments received and internal review of the Notice, two changes were made to the amendments published under Notice.

The first change to the proposed amendments has been made in the first sentence of subrule 82.5(3) in Item 1. The sentence now reads as follows: “The facility’s cost report shall be received by the Iowa Medicaid enterprise provider cost audit and rate setting unit no later than September 30 each year except as described in subrule 82.5(14).” This change is necessary to add clarity to the rule.

The second change is to add the word “directly” to the first sentence of new paragraph 82.5(11)“m” in Item 4. This change is necessary to add clarity to the amendment. The word “directly” was included in the rescinded paragraph that new 82.5(11)“m” replaces.

The Council on Human Services adopted these amendments on August 14, 2013.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments will become effective November 1, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 82.5(3) as follows:

82.5(3) *Submission of reports.* The facility’s cost report shall be ~~submitted to~~ received by the ~~department~~ Iowa Medicaid enterprise provider cost audit and rate setting unit no later than September 30 each year except as described in subrule 82.5(14).

a. The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the Iowa Medicaid enterprise provider cost audit and rate setting unit to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly assigned to the facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 82.5(3) “c.”

b. If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report.

c. Failure to timely submit the complete report within this time shall reduce payment to 75 percent of the current rate.

(1) The reduced rate shall be effective October 1 and shall remain in effect until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate setting unit.

(2) The reduced rate shall be paid for no longer than three months, after which time no further payments will be made until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate setting unit.

d. Amended reports. The department, in its sole discretion, may reopen a review of a financial and statistical report at any time. No other entity or person has the right to request that the department or its contractor reopen a review of a financial and statistical report, or submit an amended financial and statistical report for review by the department, after the facility is notified of its per diem payment rate following a review of a financial and statistical report.

e. When an intermediate care facility for persons with an intellectual disability continues to include in the total costs an item or items which had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the facility may include the cost, but must include sufficient detail so the Iowa Medicaid enterprise provider cost audit and rate setting unit can determine if a similar adjustment is needed in the current period. The department may, after considering the seriousness of the offense, make the reduction.

f. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid enterprise when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

ITEM 2. Amend subparagraph **82.5(11)“e”(1)** as follows:

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor or immediate relative; the cost of assets and services which the proprietor or immediate relative receives from the facility; and deferred compensation. Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation shall include all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including, but not limited to, salaries, wages, and fringe benefits; the cost of assets and services received; and deferred compensation. Fringe benefits shall include, but are not limited to, costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the Iowa Medicaid enterprise provider cost audit and rate setting unit. Employer portions of payroll taxes associated with amounts of compensation that exceed the maximum allowed compensation shall be considered unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, shall be required to be reported to the Iowa Medicaid enterprise provider cost audit and rate setting unit with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report shall be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 82.5(3) “c.”

ITEM 3. Adopt the following new subparagraph **82.5(11)“e”(7)**:

(7) The maximum allowed compensation for employees as set forth in subparagraphs 82.5(11)“e”(4) to 82.5(11)“e”(6) shall be adjusted by the percentage of the average work week that the employee devoted to business activity at the intermediate care facility for persons with an intellectual disability for the fiscal year of the financial and statistical report. The time devoted to the business shall be disclosed on the financial and statistical report and shall correspond to any amounts reported to the Medicare fiscal intermediary. If an owner’s or immediate relative’s time is allocated to the facility from another entity (e.g., home office), the compensation limit shall be adjusted by the percentage of total costs of the entity allocated to the facility. In no case shall the amount of salary for one employee allocated to multiple facilities be more than the maximum allowed compensation for that employee had the salary been allocated to only one facility.

ITEM 4. Rescind paragraph **82.5(11)“m”** and adopt the following new paragraph in lieu thereof:

m. Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are directly related to patient care. Legal, accounting, consulting and other professional fees, including association dues, described by the following are not considered to be patient-related and therefore are not allowable expenses:

- (1) Any fees or portion of fees used or designated for lobbying.
- (2) Nonrefundable and unused retainers.
- (3) Fees paid by the facility for the benefit of employees.
- (4) Legal fees, expenses related to expert witnesses, accounting fees and other consulting fees incurred in an administrative or judicial proceeding. EXCEPTION: Facilities may report the reasonable costs incurred in an administrative or judicial proceeding if all of the following conditions are met. Recognition of any costs will be in the fiscal period when a final determination in the administrative or judicial proceeding is made.
 1. The costs have actually been incurred and paid,
 2. The costs are reasonable expenditures for the services obtained,
 3. The facility has made a good-faith effort to settle the disputed issue before the completion of the administrative or judicial proceeding, and
 4. The facility prevails on the disputed issue.

ITEM 5. Adopt the following new paragraphs **82.5(11)“n”** and **“o”**:

- n.* Penalties or fines imposed by federal or state agencies are not allowable expenses.
- o.* Penalties, fines or fees imposed for insufficient funds or delinquent payments are not allowable expenses.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/13.